BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ROBERT E. MEYER Claimant	)	
VS.	)	
NEBRASKA FURNITURE MART Respondent	)	Docket No. 1,029,405
AND	)	
EVEREST NATIONAL INS. CO. Insurance Carrier	)	

ORDER

STATEMENT OF THE CASE

Claimant requests review of the August 15, 2011, Award entered by Administrative Law Judge Steven J. Howard. The Board heard oral argument on December 1, 2011. Michael R. Lawless, of Lenexa, Kansas, appeared for claimant. J. Scott Gordon, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

The Administrative Law Judge (ALJ) found claimant's injury was a result of a personal risk and an activity of daily life. As such, the ALJ determined that claimant is not entitled to compensation under the Kansas Workers Compensation Act (Act).

The Board has considered the entire record and adopts the stipulations enumerated in the Award.

ISSUES

Claimant contends that the ALJ erred in finding that he did not sustain personal injury by accident arising out of and in the course of his employment. Claimant argues that he was not engaged in an activity of day-to-day living at the time of his fall but, instead, was performing an activity connected to the performance of his job. Claimant asks the Board to review the findings and conclusions of the ALJ and enter an Award in favor of claimant.

Respondent argues there was not a specific work-related risk associated with claimant's alleged injury. It contends claimant had a history of treatment for leg cramps and osteoporosis, which are personal conditions unrelated to his employment for respondent. Further, respondent contends that claimant's act of walking is an activity of day-to-day living and, therefore, claimant is not entitled to compensation under the Act.

The issue for the Board's review is: Did claimant sustain personal injury by accident which arose out of and in the course of his employment with respondent?

FINDINGS OF FACT

Claimant was age 61 at the time of his discovery deposition and began working for respondent in June 2003. He was employed as a machine operator in the carpet warehouse, which required delivering flooring products to customers' vehicles. The last day he worked for respondent was the day he was injured, April 13, 2006.

On April 13, 2006, claimant saw a co-employee named Janelle come out of the office, which was evidently within the warehouse or adjacent to it, with a carpet order. Claimant walked toward her to get the order. He was walking near a carpet machine when he fell forward, landing on his left side. Claimant laid there for a moment. The night supervisor came out of the office and asked claimant if he could get up. According to claimant, another employee, James Michael (Mike) Gray, was also present and may have seen him fall. Paramedics were called. When the paramedics arrived, claimant chose not go with them because he thought he would be okay. After paramedics left, however, claimant was taken by a co-worker to Concentra Medical Centers (Concentra) and from there he was transferred by ambulance to Overland Park Regional Medical Center (Overland Park Regional). Claimant was diagnosed with a fracture of his left femur.

At claimant's discovery deposition taken March 25, 2010, he testified there had been a late snowstorm and someone had run a floor cleaner through the area where he fell. He did not know if the floor was wet. He did not know if there was anything on the floor he may have tripped over. Claimant did not know how or why he fell. However, he said he did not feel his left leg give out before the fall and he did not twist his ankle. In his regular hearing testimony,[1] claimant explained that because there had been a late snow or ice storm, a lot of salt had been thrown outside to keep vehicles from slipping. He said the salt was being tracked into the warehouse, making the floor "horrible."[2] There was also residue from the carpets, which looked like sawdust, on the warehouse floor. Claimant testified the salt and residue made the floor hard to walk on. He said respondent would have someone

[1] Claimant did not testify at the Regular Hearing held March 15, 2011. His evidentiary testimony was taken by deposition on April 19, 2011.

[2] Claimant's Depo. (R.H. testimony Apr. 19, 2011), at 18.

bring down the floor cleaner, which deposited a wet substance on the floor. He said the floor was normally cleaned about closing time, 9 p.m. On April 13, 2006, the floor cleaner had been run and the wet substance deposited on the floor just before he fell.

Mike Gray, claimant's coworker in the carpet warehouse, testified that at the time of claimant's accident, an order had come in and he was going over to Janelle to pick it up. Claimant had just come out of the restroom and saw Mr. Gray headed over to get the order. Mr. Gray said claimant jokingly acted like he was going to start running to beat Mr. Gray to the order. Mr. Gray hollered that he would get it. Claimant was behind Mr. Gray but fell ahead of him. Mr. Gray said he did not see claimant slip or trip on anything. When claimant hit the ground he had a look of embarrasment on his face. Mr. Gray asked claimant if he was okay, and claimant told him to go get the order. Mr. Gray said the order was for a rug, which he delivered to a customer's vehicle. Mr. Gray then returned to where claimant had fallen. He thought he had only been gone two or three minutes. Claimant was standing up, leaning against the cutting machine with his head down. Mr. Gray again asked claimant if he was okay, and claimant said he was and just needed to walk it off. Mr. Gray said claimant took one step, there was a cracking noise, and claimant went down and hit the floor. The paramedics were called, but claimant did not want to go to the hospital. Later, however, claimant realized he was hurt and one of his coworkers took him to obtain medical treatment.

After the accident Mr. Gray completed an incident report. His narrative, written on April 13, 2006, states in part: "Bob [claimant] came running up behind me to grab the order first. As he ran past me his leg gave out and he lost his balance and fell to the ground."[3] Mr. Gray clarified that claimant was not actually running but was shuffling, pantomiming running. Mr. Gray stated that claimant's leg gave out because that is what claimant told him. He said claimant brushed up against him as he fell. Mr. Gray asked claimant if he had knocked claimant down. Claimant's response was, "No. My leg just gave out."[4] Mr. Gray did not recall any substance on the floor that evening and was confident nothing was on the floor claimant could have tripped over. He said that when a carpet is cut, residue will fall onto the floor, but it is mostly under and around the cutter. He said the residue gets blown out every night and swept up. Although Mr. Gray had never slipped on the residue, he thought it could be slippery.

Concentra's records dated April 13, 2006, indicate, under Patient Statement, that claimant "states he was walking in walk area and left hip gave out, fell and landed on left arm."[5] Under Concentra's record titled History of Present Illness, the statement was made

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[3] Gray Depo., Ex 1.

[4] Gray Depo. at 14.

[5] Claimant's Depo. (R.H. testimony Apr. 19, 2011), Ex. 4 at 1.

that, "[t]he mechanism of injury was walking."[6] An x-ray of claimant's leg revealed a fracture of epiphysis of the left femur.

Claimant was transferred by ambulance to Overland Park Regional. A report of one of the ambulance attendants indicated: "Pt. reports being @ work when I felt a twinge in my leg. I fell to the floor . . . ."[7] Overland Park Regional's Emergency Room Report dated April 14, 2006, reflects a history that claimant "noticed pain in his left leg and then fell down on the floor . . . ."[8] A Pre-Op History and Physical dated April 14, 2006, indicates that claimant "felt like he had a muscle cramp or spasm in his left thigh causing him to fall. Spasm seemed to get worse after the fall."[9]

Claimant testified that after his fall, he mistook the pain of his leg for a cramp. He did not have a cramp or spasm prior to the fall and denied telling anyone he experienced pain or a cramp in his leg prior to the fall. He said he mentioned the word "cramp" when he was laying on the floor because he thought he was having a cramp in his leg. Claimant testified he did not remember anyone at Concentra or Overland Park Regional asking him what had happened.

Dr. Jeffrey MacMillan, an orthopedic surgeon, performed surgery on April 14, 2006, wherein an intramedullary rod was implanted in claimant's left leg. Claimant was discharged from the hospital the following day, April 15, 2006. On April 20, 2006, claimant gave a recorded statement by telephone to Donna Lehde of Cambridge Integrated Services Group, Inc. When asked to explain how the accident occurred, claimant stated:

> Well I was coming down through the crosswalk, a little walking area that they have for you, and I went to, um, pick up an order for a customer. It was handed to me. And I'm thinking that I tripped over ... there's some boxes by the machine, the, um, um, the [carver?] cutting machine.
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> . . . .
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> But I may not have tripped over some boxes. I may have just tripped and fell. Now this part I don't remember.[10]

Claimant had no memory of giving this statement to Ms. Lehde. He thought perhaps it was his wife who answered Ms. Lehde's questions. Claimant stated that at the time this

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[6] *Id.*

[7] Claimant's Depo. (R.H. testimony Apr. 19, 2011), Ex. 5 at 6.

[8] Claimant's Depo. (R.H. testimony Apr. 19, 2011), Ex. 6 at 1.

[9] Claimant's Depo. (R.H. testimony Apr. 19, 2011), Ex. 7 at 1.

[10] Claimant's Depo. (R.H. testimony Apr. 19, 2011), Ex. 3 at 2-3.

statement was given, he was hospitalized following a readmission and would have been taking medication, including pain medication.

Claimant testified that he subsequently began to have episodes of his left leg giving way, causing him to fall. In January 2009, claimant was at home walking toward his mailbox when his left leg went numb. He fell toward the right and put his arms out to catch his fall. His right arm buckled, resulting in a fracture of his right elbow. Claimant went to the Veterans Administration (VA) Hospital for treatment for his broken elbow. Claimant said his left leg was better and he had not experienced any additional problems with falling.

Claimant stated he did not have a problem with falling or with any lower extremity cramping before the accident in April 2006. He denied ever complaining to anyone at the VA about muscle cramps or his legs falling asleep before April 2006. Claimant was shown a Progress Note from the VA records dated April 28, 2005, which contains this language: "Today, his only complain [*sic*] is B/L knee pain, esp. when he does something physical. States he has to 'lift his legs' at the end of the day. Used some pain meds of his wife ?name. Gets leg cramps at night."[11] Claimant testified he did not remember making those complaints, however, he admitted he had a history of osteoporosis for which he had been prescribed medication, including over-the-counter vitamin D, prior to the accident. At one time he had been on medication for his cholesterol and one of the side effects was cramping. He did not remember when he was given that medication or how long he took it.

Dr. Edward Prostic, a board certified orthopedic surgeon, examined claimant at the request of his attorney on May 1, 2009. Claimant provided Dr. Prostic with a history of injury on April 13, 2006, when he lost his footing on a slick spot on the floor at work and fell, landing on his left leg. Dr. Prostic concluded that on April 13, 2006, claimant sustained a subtrochanteric fracture of his left femur. He said claimant has a solid healing of the fracture with good position and alignment. Dr. Prostic also found left thigh atrophy and weakness of the left leg. Dr. Prostic stated it did not appear that claimant's fracture was pathological and that the cause of the fracture was claimant's slip and fall and was not the result of a spontaneous break of the bone. Utilizing the AMA *Guides*,[12] Dr. Prostic rated claimant at 15 percent permanent partial impairment of the left lower extremity.

Dr. Prostic evaluated claimant again on April 21, 2010, to consider the elbow injury. Claimant provided a history that subsequent to the treatment of his left leg he had a series of "giving way" episodes of the left leg. One of those episodes caused a fracture of claimant's right elbow. Dr. Prostic opined that the weakness associated with claimant's knee was a likely cause of the 2009 fall rather than a spasm or cramp. He believed the

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[11] Claimant's Depo. (R.H. testimony Apr. 19, 2011), Ex. 8.

[12] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

weakness of claimant's knee was a natural consequence of the initial injury to his left thigh. Dr. Prostic noted on physical examination that claimant had atrophy of the muscles of his right arm, significant weakness of his right triceps, and a deficit in rotation of the right forearm. Claimant could not straighten his right elbow completely. Based on the AMA *Guides*, Dr. Prostic rated claimant at 20 percent permanent partial impairment to the right upper extremity, which he found was directly related to the original injury of April 13, 2006.

Dr. Prostic acknowledged that the records of Concentra, the ambulance report, and the Overland Park Regional records all indicate claimant gave a history of a muscle cramp or spasm in his left thigh which caused him to fall. He agreed that those records were not consistent with the history provided to him by claimant. He also acknowledged that most patients are more likely to accurately recall how an accident occurred immediately after the accident versus three years thereafter.

Dr. Terrence Pratt is board certified in physical medicine and rehabilitation. He performed an independent medical examination on September 9, 2010, pursuant to an order of the ALJ. Claimant told Dr. Pratt he was injured when he slipped in a warehouse and he believed it was related to a floor cleaner used to remove salt after a storm. Claimant also provided Dr. Pratt with a history of his fall in March 2009 when he fractured his right elbow. Dr. Pratt noted that claimant has a history of osteoporosis.

Dr. Pratt diagnosed a nondisplaced left subtrochanteric fracture of the left femur, treated with open reduction and internal fixation. He also diagnosed a complex right elbow fracture, status post open reduction and internal fixation of a right olecranon, right radial head prosthesis replacement, and lateral ligamentous reconstruction of the right elbow.

Based on the AMA *Guides*, Dr. Pratt rated claimant at 21 percent permanent partial impairment to the left lower extremity and 21 percent permanent partial impairment to the right upper extremity.

Dr. Pratt acknowledged that claimant's history to Concentra, the paramedics, and Overland Park Regional is inconsistent with the history claimant provided to Dr. Pratt. Other than the history claimant gave to Dr. Prostic, none of the medical records contain a history that claimant slipped or tripped on any substance at work. Based on the medical records Dr. Pratt reviewed and the histories provided, he opined it was more probable than not that claimant's left leg simply gave out when he was walking, causing him injury and resulting in his disability. Dr. Pratt also indicated that patients generally can provide a more accurate history of an accident on the day of, or a couple of days after, an accident versus three years after an accident.

Dr. Pratt agreed with respondent's counsel that in general when patients slip and fall they land on their backs whereas when a patient's leg gives out he or she will generally land on the side where the leg that gave out. The medical records indicated that claimant fell

on his left side on April 13, 2006. Dr. Pratt also expressed the opinion that it is possible claimant's left leg gave out and he fell to the right in March 2009.

Dr. Pratt agreed with Dr. Prostic's opinion that claimant likely broke his bone because of the fall and did not have a spontaneous fracture of the bone before the fall.

PRINCIPLES OF LAW

K.S.A. 2010 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2010 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[13] Whether an accident arises out of and in the course of the worker's employment depends upon the facts associated with each case.[14]

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[15]

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[13] K.S.A. 2010 Supp. 44-501(a).

[14] *Halford v. Nowak Construction Co.*, 39 Kan. App. 2d 935, 186 P.3d 206. *rev. denied* 287 Kan. 765 (2008).

[15] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995); *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, 955 P.2d 1315 (1997).

In *Martin,*[16] the Kansas Court of Appeals held that "[i]njuries resulting from risk personal to an employee do not arise out of his employment and are not compensable."

K.S.A. 2010 Supp. 44-508(e) provides that "[a]n injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living."

In *Bryant*,[17] the Kansas Supreme Court recently stated the following after discussing the holdings of a number of Kansas appellate court opinions involving "arising out of" issues:

> We cannot discern a consistent principle in these various opinions. Certainly, no bright-line rule emerges from analysis of these cases or from the plain language of the statute. To be sure, twisting or bending over are daily activities, for workers as well as nonworkers. So are lifting objects, cutting pieces of meat, typing on keyboards, and walking and standing for extended periods of time. The Court of Appeals' opinion in the present case tends to remove from the purview of workers compensation protection the many work-related ailments that follow from activities that may also be carried out away from the job.
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> Although no bright-line test for what constitutes a work-injury is possible, the proper approach is to focus on whether the injury occurred as a consequence of the broad spectrum of life's ongoing daily activities, such as chewing or breathing or walking in ways that were not peculiar to the job, or as a consequence of an event or continuing events specific to the requirements of performing one's job. "The right to compensation benefits depends on one simple test: Was there a work-connected injury? . . . [T]he test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment." 1 Larson's Workers' Compensation Law § 1.03[1] (2011).
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> Even though no bright-line test for whether an injury arises out of employment is possible, the focus of inquiry should be on the [*sic*] whether the activity that results in injury is connected to, or is inherent in, the performance of the job. The statutory scheme does not reduce the analysis to an isolated movement–bending, twisting, lifting, walking, or other body motions–but looks to the overall context of what the worker was doing–welding, reaching for tools, getting in or out of a vehicle, or engaging in other work-related activities.

ANALYSIS

The specific activity in which the claimant was engaged at the time of his injury was walking. That activity is not limited to the work claimant performed for respondent.

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[16] *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, Syl. ¶ 3, 615 P.2d 168 (1980).

[17] *Bryant v. Midwest Staff Solutions, Inc.*, 292 Kan. 585, 595-96, 257 P.3d 255 (2011).

Undoubtedly, claimant had to walk when he was not working and in that sense the claimant's injury and disability were consequences of an activity of day-to-day living, as the ALJ found. The Kansas Supreme Court in *Bryant* instructs that the analysis should not end with that determination. The court found that the focus of the inquiry is not on an isolated movement but rather on the overall context of what claimant was doing and whether that activity is connected to or inherent in the performance of his job.

Obtaining delivery orders was a duty claimant was required to perform in his job for respondent; however, so were the activities of the claimants to whom compensation was denied in *Martin*,[18] *Boeckmann*,[19] and *Johnson*.[20] There is no evidence in this record which establishes that claimant was required to walk–or to walk on hard surfaces–to a greater degree, or in a different manner, at work than in his personal life. There is no evidence that claimant was at an increased risk to be injured while walking at work than elsewhere. On the contrary, the preponderance of the credible evidence is that claimant felt a pain, cramping sensation, or spasm in his left leg which caused him to fall and fracture his left leg. There is no evidence that the "giving way" and/or symptoms claimant experienced in his leg before the fall had any causal relationship with claimant's work duties or the incidents of his job. Clearly, for claimant's accident to arise out his employment there must be some causal connection between his work and a risk or hazzard of injury to which claimant would not be equally exposed outside of the work.[21]

Other than claimant's job title of machine operator and the fact that his work required walking to some unknown extent, there is no detailed description of the duties claimant was required to perform. It is more probably true than not that claimant fell because his leg simply gave out, as Dr. Pratt found, or as a consequence of claimant's osteoporosis or some other personal condition, such as his previous difficulty with lower extremity cramping.

Claimant's regular hearing testimony is decidedly unhelpful in this inquiry because claimant's history about precisely how his fall occurred is in conflict with much of the other evidence in the record, including claimant's discovery testimony. At his discovery deposition, claimant testified that he couldn't say if the floor he fell on was wet, but claimant

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[18] *Martin v U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980) (claimant injured when he twisted his back while exiting his truck after arriving for work in respondent's parking lot.)

[19] *Boeckmann v Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972) (claimant injured when stooping down to pull a tire off a conveyor belt.)

[20] *Johnson v Johnson County*, 36 Kan. App. 2d 786, 147 P.3d 1091, *rev. denied* 281 Kan. 1378 (2006) (claimant injured when she simultaneously turned in her chair and attempted to stand while reaching for an overhead file.)

[21] See *Siebert v. Hoch*, 199 Kan. 299, 428 P.2d 825 (1967); *Taber v Tole Landscape Co.*, 181 Kan. 616, 313 P.2d 290 (1957); *Covert v John Morrell & Co.*, 138 Kan. 592, 27 P.2d 553 (1933).

changed his mind about that by the time of his regular hearing testimony. Claimant's regular hearing testimony was that the floor was wet and slippery. At his discovery deposition, claimant testified that he did not know if there was anything on the floor which could have caused him to trip and that he does not know if he tripped or not. That testimony stands in contrast to what claimant told Dr. Prostic ("He lost his footing on a slick spot on the floor, landing on his left leg."[22]) and Dr. Pratt ("...he reports that he slipped in a warehouse," and "believes it related to a floor cleaner, used to remove salt after a storm."[23]).

Further, claimant's recollection is at variance with the testimony of witness Mike Gray. Mr. Gray observed no tripping. He recalls nothing on the floor on which claimant could have tripped. He recalls no slipperiness of the floor. After the fall, claimant told Mr. Gray, "My leg just gave out."[24] Claimant's testimony is also at odds with the documentary evidence in the record. The Concentra records document a history that claimant "was walking in walk area and left hip gave out, fell and landed on left arm."[25] The report of the ambulance attendants sets forth a history that claimant "felt a twinge in my leg" and "fell to the floor."[26] The emergency room records from Overland Park Regional provide a history that claimant "noticed pain in his left leg and then fell down to the floor."[27] The hospital records of April 14, 2006, document a history that claimant "felt like he had a muscle cramp or spasm in his left thigh causing him to fall."[28] Claimant's recorded statement provided to Ms. Lehde is also in conflict with claimant's regular hearing testimony in that claimant told Ms. Lehde that he may have tripped on some boxes but also that he could not remember.

Both Dr. Prostic and Dr. Pratt testified that the histories claimant provided to them were inconsistent with the treatment records of Concentra, Overland Park Regional, and the paramedic's report. Dr. Pratt testified that given the histories set forth in the medical records, it is more probably true than not that claimant's left leg simply gave out, causing claimant to fall and fracture his left femur.[29]

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[22] Prostic deposition Ex. 2 at 1.

[23] Pratt Depo., Ex. 2 at 1.

[24] Gray Depo. at 14.

[25] Pratt Depo., Ex. 4.

[26] Pratt Depo., Ex. 5.

[27] Pratt Depo., Ex. 6.

[28] Pratt Depo., Ex. 7.

[29] Pratt Depo. at 13, 14.

On several previous occasions, the Board has held that "unexplained falls" should be considered neutral risks and therefore compensable.[30] In those claims, the Board relied on the three-tier risk analysis applied by the Kansas Supreme Court in *Hensley*.[31] However, the court in *Bryant*[32] specifically discussed the analysis in *Hensley,* as well as a number of other cases, and concluded that no consistent principle or bright line test could be gleaned from previous opinions involving "arising out of" issues. *Bryant*, as set forth above in the quoted material from that opinion, provides the court's current thinking on the subject. The court chose not to identify *Hensley's* risk analysis as either a consistent principle or bright line test.

Furthermore, *Hensley* is significantly distinguishable from this claim. In *Hensley*, the basis of the court's decision was that the claimant's job exposed him to a greater risk of injury from a rooftop sniper because his job required him to work at heights, thus making Mr. Hensley a more accessible and obvious target. In this claim, claimant has not satisfied his burden that the cause of his fall–either his leg giving way or a sudden cramp or pain in his left leg–was in any manner connected to the obligations or incidents of his employment. Even utilizing the work/neutral/personal risk analysis of *Hensley*, the risk of claimant falling as he did was personal in nature, having no connection to claimant's work.

Under the circumstances of this claim, the Board finds that claimant has not sustained his burden of proof to persuade the trier of fact by a preponderance of the credible evidence that claimant suffered personal injury by accident arising out of and in the course of his employment with respondent. Accordingly, compensation must be denied.

CONCLUSION

Claimant has not sustained his burden of proof that he sustained personal injury by accident arising out of and in the course of his employment with respondent.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Steven J. Howard dated August 15, 2011, is affirmed in all respects.

IT IS SO ORDERED.

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[30] See, *e.g.*, *Rohr v Butler Community College*, No. 1,056,422, 2011 WL 6122926 (Kan. WCAB Nov. 17, 2011); *Toumi v. Senne & Company, Inc.*, No. 237,798, 1999 WL 55385 (Kan. WCAB Jan. 26, 1999).

[31] *Hensley v Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

[32] *Bryant v. Midwest Staff Solutions, Inc.*, 292 Kan. 585, 257 P.3d 255 (2011).

Dated this _____ day of December, 2011.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael R. Lawless, Attorney for Claimant
J. Scott Gordon, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge